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File No. O. Inams
51
Legal Department.

A BRANCH

Subject:— Opinions regarding
Inams and Jahagirs

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C O N T E N T S.

Legal Department File No. O. Inam/51.

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Office of the R.L.A.

It appears from the Assistant Inam Commissioner's decision No.99/103 dated 17th April, 1856 and Government Resolution No.623 dated 10th July 1861 that the village has been continued for service during the pleasure of Government and on the basis of terms of this settlement, it would be competent for Government to resume the grant, if Government do not require the services from the grantee. However, from the extract of the Alienation Register at page 56 of the file, it appears that the grant has been classified as personal inam Class II which would presumably be inconsistent with treating the grant as one for service. It is not also clear from the extract of the Alienation Register whether any Sanad was issued to the grantee. If a Sanad has been issued, the relations between the parties, that is to say, the Government and the grantee, would be governed by the terms and conditions of the Sanad. R.D. has proposed to resume the grant on the ground that Government do not require the services of the grantee any longer but such a step is very drastic and it appears necessary to consider the terms and conditions of the grant more carefully before the resumption, as proposed, of the grant is made. Before taking such a drastic step, R.D. should make further enquiry into the matter and ascertain why this inam, even though it was settled as service inam, was classified as personal inam.

Id/- P.H.L. 3/11

Remembrancer of Legal Affairs

Office of the R.L.A.

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Id/- P.H.L. 3/11

Remembrancer of Legal Affairs.

Inam Village Sule,
Distt. Kolhapur,
~~Review of~~
Review of
Kolhapur Govt.
order.

Legal Department.

From 'A' in para 2 of the P. & S.D. office note at page 22 ante it appears that the orders passed by the Kolhapur Government on 11-6-1948 and 30-1-1949 upholding the recommendations of the Inam Enquiry Committee are not considered to be mala fide. The Committee was empowered to receive and consider the evidence that the aggrieved Inamdars has submitted. The complaint of the Inamdar of Sule was that the village in question was granted as Inam to his family even prior to the Ichalkaranji Jahagirdar's possession of the Ajra Mahal and that one order of the Jahagirdars to resume the same on the ground that it was held on the "contract of revenue farming" was unjust and wrong. The Inam Enquiry Committee held that the village was held on "Watan Kamavishi tenure" and not on the contract of revenue farming. From the copy of the Sanad which appears to have been submitted by the Inamdar of Sule (at p.39 of file I) it appears that the grantee was authorised to enjoy the income & "Putra Pautrad Vanshaparampareno" on payment of the fixed amount to the Jahagirdar. Since the Committee has passed its view after taking into consideration the relevant documents submitted by the Inamdar and since the orders passed by the Kolhapur Darbar can not be considered to be mala fide or perverse, this does not appear to be a matter in which the State Government need interfere.

Id/- J.R.D. 7/2

Additional Secretary to Government.

to P. & S.D. No. 2448, dated the 8th February '51.

Legal Department.

Inan village Haldi,
Dist. Kolhapur -
Right to forest
trees in -

This is in connection with the representation made by Major Pratapsinhrao Himmat Bahadur, Jahagirdar of Kolhapur, about his claim to the teak and other forest trees in village Haldi, district Kolhapur. The claim is not made against the Government but against one Rukminibai Chavan who had applied to the District Forest Officer, Kolhapur, for permission to fell and remove teak trees in that village and whose application was granted by the D.F.O. The applicant requests that his claim to the forest ~~x~~ trees may be ~~regard~~ recognised in preference to that of Rukminibai.

2. The circumstances in which Rukminibai came to claim the forest trees are as follows:-

In the year 1784-85 the Himmat Bahadur Saranjam was granted to one Pritirao Chavan, an ancestor of the petitioner. The village Haldi was one of the villages attached to that Saranjam. On Pritirao's death in 1810, his eldest son Udayirao succeeded to the Saranjam. Udayirao had 3 sons, (1) Rattajirao, (2) Jotyajirao, and (3) Jivanrao. After the death of Udayirao in 1842 and on the succession of Rattajirao, differences arose between him and the youngest brother Jivanrao, the other brother Jotyajirao having in the meantime been given in adoption in another family. A settlement was arrived at whereunder three villages including Haldi were assigned to the youngest brother. Further disputes however continued and ultimately in 1849 the settlement of 1843 was revoked and a fresh settlement

was effected under which the income of the 3 villages was assigned for the expenses of Jivnarao. Jivnarao was succeeded by Madhavrao and Govindrao the husband of Rukminibai. The dispute which again arose after Madhavrao's death was ultimately decided by the Government of Bombay in 1931. As regards the nature of the grant the Government of Bombay was of the view that the original grant to Jivnarao was for maintenance only. The applicant is relying upon that decision, so far as Rukminibai's case is concerned, the D.F.O. placed reliance upon the report made by the Forest Settlement Officer, Kolhapur on 20-5-1890 and the order passed by the Sarsubha, Kolhapur State, on 30-5-1890, under which it has been decided that as between the Government of Kolhapur and the Himmat Bahadur, the right to forest trees in Haldi belonged to the latter, but as the village had been assigned for maintenance to Madhavrao (i.e. the father of Rukminibai's husband) the management of the forest was in his vahivat. Both the Collector of Kolhapur and the D.G.P. agree with the decision of the D.F.O. The R.L.A. is requested to advise. The question for the consideration of the R.L.A. is whether the right over the forests in the village Haldi vests in Rukminibai or Shri Pratapsinh, the petitioner.

3. The main contentions of the petitioner are as mentioned in para. 2 of the Collector's report at pp. 135-137 ante. But these are not new arguments, all these points had been considered by the Government of Bombay when they finally decided the dispute in 1931. It is true Government endorsed the conclusion of the

Resident that the grant to the ancestors of Rukminibai was for maintenance only and that it was not a separate grant of saranjam attached to the title of Undetul Umrao. But it has been stated that as the management of the villages in question had been in the uninterrupted possession of the memorialist's family (i.e. Rukminibai's family) from 1848 to 1915, the predecessor in title of ~~Rukminibai~~ was entitled to claim the same - as well as the surplus income over Rs.2000/-, also by right of adverse possession. This decision indicates that the predecessors in title were entitled to the total income of the village without any deduction. There is nothing to indicate that forest rights were excluded from the maintenance grant. From the report of the Forest Settlement Officer dated 20-5-1890 endorsed by the Sarsubha it is also clear that the right to enjoy the forest revenue was enjoyed by Rukminibai's family. Jivnarao's family appears to be enjoying the right to forest revenue also by adverse possession. The petitioner's father took no steps to get the decision of the Forest Settlement Officer upset. Since the question of the right of Rukminibai's family to enjoy the forest revenue has been decided long back, it does not appear worth-while reopening the matter and granting the petitioner's request.

Id/- J.R.D. 11/2

Additional Secretary to Government.

U.R. to A. & F.D. No.2776, dated the 13th February 1951.

Legal Department.

Restoration of
Inam Lands in
Danoli village
to Lashkar Bahadur.

It appears that the lands in the Danoli village were in Inam by the ancestors of the applicant in 1851 by Sanad No.16. The land was to be enjoyed by the grantee, his sons, grandsons and so on from generation to generation. In another letter No. 18 of ~~18~~ 1851 issued simultaneously, it appears, that the lands were granted in inam in liquidation of debts incurred by the Sar Lashkar Jahagir from Asagikar. It was stated in the said letter ~~in~~ that "the land will accordingly (be) continued to you, to which no molestation will be caused by us and our descendants regarding any deb as Inam Patti etc. (but) if any such occurs, we shall repay in cash the said hukori sum of five thousand without deducting the assessment during (the time of) enjoyment". This letter sets forth the reason of the grant and it contained a clause that Rs.5000/- are to be paid to the grantee if his ~~g~~ enjoyment of the inam is disturbed. On ~~on~~ the death of the grantee in 1918 an heirship enquiry was started and orders were passed by the Lashkar Bahadur that the lands should be Rs.5000. This order was in accordance with the terms of resumed by paying the sanad and the letter issued on the same date. In the revision application made against this order, the Resident at Kolhapur rejected the application and the application made to the Bombay Government was also rejected in 1924. He made another attempt to reopen the matter in 1925 without any success. It was therefore not correct for His Highness to pass orders in 1929 to lease out lands to Shri Asagikar. This order and all subsequent proceedings of His High-

ness and the Saraubha of Kolhapur were therefore invalid. However even, as late as 1946, the Regency Council, on the representation of Sar Lashkar Bahagirdar, on attaining majority, passed order giving possession of the lands to the Jehagirdar on his depositing Rs. 5000/- for being paid to Shri Asagikar. In view of the fact that the lands were leased out to Asagikar by His Highness it would be necessary for this Government to dispossess him and restore them to Sar Lashkar Bahadur and to treat Asagikar as tenant since 1929 and recover the rent from him for that period in excess of Rs. 5000 which amount was required to be deposited and pay the balance to Sar Lashkar Bahadur. The view taken by R.D. in para. 3 of its note dated 27th December 1950 is correct.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 3526, dated the 27th February 1951.

Legal Department.

Since the mistake of over-payment was detected in 1933, the Patil and Kulkarni could have sued for refund of the excess payment within three years. They did not do so. Since the limitation has expired long ago, strictly speaking their claims for refund are time barred. However since in equity they are entitled to refund and the enquiry in that connection was pending with the revenue authorities during all this period, refund may be allowed.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 3565, dated the 28th Feb. 1951.

KAN/12-7.

4 c.

Office of the R.L.A.

The Collector and Court of Wards, Kolhapur, in his letter at page 1 ante, states that the Deshpande Inam land bearing R.S.No.43 situate at Bajar-Ehogan, Mahal Panhala, which stands in the name of one V.H.Deshpande is actually in the possession of one G.S.Kulkarni. The estate of the grandson of V.H.Deshpande is at present under the control of the Court of Wards who therefore instituted inquiries to find out how the Deshpande Inam land in question went in the possession of Shri G.S. Kulkarni. A Jahirnama bearing No.1026, dated 24-10-1945 was issued by the Revenue Minister of Kolhapur imposing restrictions on the alienation of Inam lands. In the absence of satisfactory evidence of his title by the said G.S.Kulkarni an order was issued on 26-7-1946 by the Revenue Minister directing that possession of the land should be taken over by the Court of Wards. The Jahirnama in question was issued in supersession of the Political Agent's Wat, Hukum of 1873. Prior to 1873 there were no restrictions on the alienation of Inam lands. In the present case the occupant (Shri Kulkarni) is in possession of the lands long before 1873 by adverse possession; he does not claim his title on the authority of any deed of transfer. In the circumstances, the Collector solicits the order of Government as to whether he should start proceedings for taking possession of the land in question. The R.L.A. is requested to advise in the matter.

2. Para 7 of the Political Agent's Vathukum No.76 of 1873 states:-

* lands)

"The aforesaid lands (Sanadi and other service ~~lands~~)

not being private lands cannot be alienated by mortgage, sale or gift and the owner thereof has no right so to do. Such alienation will not be recognized in the courts of the Kolhapur State and the alienee's rights cannot be recognised by Government. Even though the deeds in respect of such alienations are registered, Government will not recognise such transaction."

This paragraph appears to contemplate that the service lands were to be considered as the property of Government and it is not expressly stated that prior alienations were unaffected. Para 4 of the Vathukum Jahirnama No. 1026 dated 4.10.1945, issued in supersession of the aforesaid Political Agent's Vathukum of 1873 states: "The liabilities created by the holder of any such land or sharer thereof would not be binding on his successor. Consequently, the holder would be entitled to restoration of the lands through the Revenue Department in cases where such lands have been alienated by his ancestors in violation of the rules and the applications for the same should be submitted to the Sarsubha."

It appears from these provisions that the alienations of Inam lands, however old, could be set aside by Government and the lands restored to the Inamdar or Watandar. The Political Agent's Vathukum of 1873 and the Jahirnama of 1945 prohibit alienation of service lands. "Alienation implies action not the passive lying by the incumbent and a prohibition, which is confined in terms to alienation cannot therefore avoid the effect of adverse possession by a stranger during the

life of an incumbent of the Watan". (See Radhabai vs. Anant Rao 9 Bom. 198 at p.210). In the present case it appears that there was no such alienation and the possession of Shri Kulkarni, which commenced prior to 1873, would be adverse to Deshpande, the holder of the service lands. Consequently, Shri Deshpande's claim for possession would be barred by limitation in a Court of Law, but as stated above, para 4 of the Jahirnama of 1945 vests power in Government to declare the alienation null and void and to restore possession. In other words, the service lands are considered to be the property of Government and it would be competent for Government to restore possession to the rightful claimant. In Tuka Vs. Ganu 32 Bom. L.R. page 1398, it was held: Sections 8, 9, 10, 11, 11-A, 12 and 13 of the Watan Act sufficiently safeguard the rights of the State and the Collector can assert the rights of the State at any time irrespective of the question of limitation." Para 4 of the Jahirnama of 1945 is in the nature of provisions in sections 8 to 13 of the Watan Act. Consequently, it would be possible to contend that Government's action for resuming possession of the lands from Kulkarni and handing it over to Deshpande in the present case, though such possession commenced about 80 years, would not be barred by limitation. The point is, however, not free from doubt and the legal position in respect of such service lands is not quite clear. Consequently it appears safer to implement the order of 1946 and leave it to Shri Kulkarni to seek his remedy in a court of law, if he wants to dispute the legality of the order of 1946.

16/- J.R.D. 2/4.

Remembrancer of Legal Affairs.

AN 112 7.

11-11-46 to R.D. No. 5422 dated the 4th April 1951.

Legal Department.

It appears that the entire village Padve in Rajapur Taluka, District Ratnagiri, was originally granted as Class II Personal Inam to the Dixit family. The Inam is a permanent enfranchised or private property. The last holder, Shri Shripad Bhaskar is dead and his son Shri Shankar Shripad Dixit is entitled to have his name entered as Inamdar. Though he is entitled to be recognized as Inamdar in Government records he actually holds 10 pies share in the entire Inam village. There are other 12 share-holders who hold different shares in the village. As Shri Shankar Shripad Dixit would be recognized as Inamdar by the rule of primogeniture he would be responsible to Government for the payment of Government dues. As he lives in Bombay and his Inam share in the village ~~is very small, he finds it~~ ^{is very small, he finds it} very un-
 economical to manage the village and pay off the Government dues for the entire village, particularly when other co-shareholders do not appear to be prompt in paying their share of Government dues. He has therefore, by his application dated 17-4-50, relinquished the charge of the Inamdar as well as Inam share in the village. He does not want any compensation for the relinquishment of his share. He requests Government to relieve him of his liability. The Collector in his letter dated 14-11-1950 at page 25 ante reports that the other sharers are not prepared to forego their claim in the Inam village. He therefore seeks order of Government as to whether the next senior man from the eldest family may be accepted as Inamdar to the Inamat or only the share of the applicant may be forfeited. Revenue Department appears to be of the view that section 74 of the Land Revenue Code would be attracted in this case, and Government may accept the relinquishment of the applicant share under this section; R.L.A. is requested to advise whether the view taken by Revenue Department is correct.

- . - 2 -

2. Section 74 of the Bombay Land Revenue Code provides for the relinquishment of an occupancy of unalienated land (see the heading to Chapter VI of the Land Revenue Code). Apparently therefore, this section would not be available. The view taken by Revenue Department is not correct. However, there would be no legal objection to Government accepting the relinquishment by the Inamdar of his right to manage as well as his interest in the Inam. Consequently, Government may accept the applicant's relinquishment and relieve him of his liability to manage the village. His 10 pies share in the Inam would therefore vest in Government with the result that the village after the acceptance of the relinquishment would become a Sharakati village. (see Article 169 of Joglekar's Alienation Manual at p.141). The interest of the other sharers in the Inam would not be affected by the relinquishment of the applicant's interest in the Inam. It is not necessary that the name of any other sharer should be entered as the Inamdar of the village with a right to manage. Government may take over the management of the village.

Id/- B.M.D.

Additional Secretary to Government

U.R. to R.D. No. 3700 dt. 3rd March, 1951.

KAN/12-7.
4 c.

Legal Department.

This is in connection with the petition made by Shri Y.R. Bhosale, Inamdar of Hasur Taluka Karvir, District Kolhapur, against the order of the Sub-Divisional Officer, Kolhapur, dated 2nd January 1948, directing him to pay the arrears of the education cess with effect from 1918 at Rs. 178/- per year. This cess was first imposed by the Kolhapur Government under the Sarsubha Hukum No.0, dated the 29th April 1918. This was modified by Wat Kukum No.21, dated 24th March 1919. The contention of the Appellant is that the cess was not recovered from him since that year as it was not leviable on him since he was not paying service commutation. That this Inamdar was not paying the cess was first noticed by the District Officer, Northern Division, and ultimately, it appears that a cess of Rs. 178/- per year was fixed on the probable commutation value. The P. & S.D. has raised the following two questions for consideration:-

(1) Whether according to Vat No.0, dated 29th April 1918 the education cess is required to be levied on only those Saranjamdars and Dumaldars on whom service commutation fee has been charged or on all Saranjamdars irrespective of the commutation cess;

(2) Whether it would be appropriate to recover the cess from 1918 onwards i.e. from the date when it was first decided to be levied to 1948 with a retrospective effect, that too from a person who was actually rendering service.

The P. & S.D. has arrived at the conclusion that under the two Wat Hukums in question the cess was leviable only on the basis of the commutation fee, that, therefore, it was not leviable on Inamdars rendering service and that the contrary view expressed by the Collector of Kolhapur is wrong. The R.L.A. is requested to advise in the matter.

2. The two Wat Hukums dated 29th April 1918 and 24th

March 1919 will be found at pages 892 and 891 of Volume II of the Wat Hukums. The former order was made in order to compel the Inamdars and Dumaldars to bear a portion of the expenditure which the Kolhapur Government had to incur on account of free and compulsory education. The rate of this cess was therefore declared to be 20 rupees per hundred in respect of Inamdars paying 15% or 10% or more or less as service commutation. The above order was clarified by Sarsubha Vat No.21 dated 24th March 1919. By para. 1 of that order it was directed that the commutation plus the education cess should not exceed 20% ; para. 2 directed that from Inamdars who paid 20% or more as commutation, only Rs. 5 should be levied as cess. The last para. (No.4) of that order provides the rate at which the cess shall be ~~levied~~ levied in respect of Devasthan villages, Dharmadaya, Karkhandars and Huzur Sanadis. The latter two to be exempted if they were rendering service. Thus it would be seen from these two orders of 1918 and 1919 that the basis for the levy of the cess was the commutation value in respect of Inamdars and Dumaldars and the proportions referred to in para. 4 in respect of Devasthan, Dharmadaya etc. If the Inamdar of Hasur - Shri Ehosale - was rendering service since 1917 as mentioned in para. 2 of the P. & S.D. office note, it does not appear correct that the cess should be imposed on him. It would be wrong to fix the rate on the basis of the probable commutation value. The intention of the Kolhapur State orders was not to require Inamdars of his type both to render service as well as to pay the cess. The view expressed in the P. & S.D. office note on the first question appears to be correct. The second question does not survive.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to P. & S.D. No.5800, dated the 11th April '51.

Legal Department.

In his Opinion No. 5536, dated the 18th May 1949, the R.L.A. after considering the papers underlying G.R.R.D. No. 3529, dated the 9th July 1874 whereunder the villages (1) Kandach (2) Khandoli, (3) Alali, (4) Sureli and (5) Madvas in Kalol Taluks of the Panch Mahals District were settled under the Summary Settlement, opined that these villages being shown in the Land Alienation Register of Kalol Taluka as brought under the Summary settlement by the aforesaid G.R. of 1874, the classification in the Alienation Register should not be changed even though the Sanad issued in respect of these villages showed that the grant was a personal one of Class II. In his endorsement at page 17 ante the Commissioner, Norther Division has expressed the view that the Inam village Vintoj appears to be identical with those covered by R.L.A.'s Opinion and consequently, the Revenue Department considers^e that there seems no objection to cancelling the Government Resolution of 1945 whereunder the classification of this village was ordered to be changed from "Vatan Inam" to "Personal Inam" in the Land Alienation Register in accordance with the Sanad issued in respect of this Village. The R.L.A. is requested to advise.

2. It is admitted that this Village Vintoj was settled under G.R.R.D. 3529, dated 9th July 1874. That G.R. and the papers underlying it are not forthcoming. The Sanad is evidently an agreement between the parties and states that it is a personal Inam. Even that Sanad has not been forwarded to the R.L.A. It is, therefore, clear that there are no materials on which the R.L.A. can base his opinion in respect of this village. Besides, it is stated by Revenue Department in its office note at page 7 of File No. 537/45-F of 1945, that the alienated village of Vintoj is shown as "Vatan Inam - Class IV" whereas in Column 11 it is shown as 'Private or en-

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~~for~~ franchised property'. It appears, therefore, that the entries in the Alienation Register in respect of this village appear to be conflicting. Government has already taken the decision to change the classification of this village from 'Watan Inam' to 'Personal Inam' (See G.R.R.D. No, 537/45 dated the 31st July 1945). In the circumstances, it appears safer to allow the orders of 1945 to continue and to refer the aggrieved parties to the Civil Court.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No.6078 dated 14th April 1951.

KAN/12-7.

4 c.

Legal Department.

Majigaon
Village.

Grant -
whether of
soil or
revenue -

R.L.A.'s
opinion
No.3/29
dated
14.11.1929.

It appears that the nature of the grant of this village Majigaon was considered by the Court and it was held that it was a grant of revenue only; and in his opinion No.3/29 dated 14th November 1929 the Remembrancer of Legal Affairs advised that there was no legal objection to giving a certificate under the Pensions Act relying on that decision of the Court. It, therefore, follows that there is a definite finding of the Court that the grant of the village Majigaon was one of revenue only. Consequently what the Inamdar would be entitled to get, in the event of the tanks being acquired by Government, would be the compensation to the extent of the loss of revenue only. The view taken by Revenue Department at page 43 ante is correct.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to R.D.No.6301, dated the 18th April 1951.

W/13-7.
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Legal Department.

Resumption of
service inam
whose service
of the Inamdar
is not required.

It appears from the reference to Act XI of 1852, Schedule 'B', rule 6 (probably it must be 8) and rule 10 in the margin to the Assistant Commissioner's order dated the 17th April 1856 that this Inam was held to be an Inam for the service of Government continuable during the pleasure of Government. On appeal to Government against that order, it appears that Government, by its order No. 2377, dated the 19th July 1853, ordered that the Inamdar's possession was in no way altered by the decision of the Assistant Inam Commissioner and that the Government letter in the Judicial Department No. 2685, dated the 21st May 1851, under which he then enjoyed the village remained in full force, his holding being contingent on his good behaviour and on his performing service whenever called upon by the Magistrate or Police authorities. It would, therefore, follow that this village was settled as service Inam. Consequently, rule 4 of the Resumption Rules will apply and if Government considers that the service of the Inamdar is no longer needed by Government, it would be open to Government to resume it. Since the entry in the Alienation Register throws some doubt about this legal position, a show cause notice should be issued to the heirs of the deceased Inamdar before the inam is resumed.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 7085, dated the 4th May 1951.

W/13-7.

C.

Office of the R.L.A.

The Chief Conservator of Forests has raised the question about the right of Shri R.B.Joglekar, the Inamdar of Bhuritek, (formerly of the Jawhar State), to the teak and injaili trees in that Inam village. The Inamdar has produced a Sanad issued by the Ruler of Jawhar in 1920 in support of his claim. It appears from the Sanad that the village Bhuritek was first granted in Inam from generation to generation (अनवरण) to Shri R.B.Joglekar's father. Then it was granted in Inam to Shri Damodar Gowind Joglekar by Shrimant Sagunabai Rane Sahab and after his death it was put under attachment pending heirship enquiry. The applicant Shri R.B.Joglekar was found to be the next heir, and the sanad of 1920 was, therefore, granted to him. The sanad in question bestows the same rights as were being enjoyed by Damodar Gowind Joglekar under the sanad granted to him by Sagunabai Rane Sahab. The only additional condition being that the village will be under the management of the State and the grantee will be paid the amount remaining after deducting the management charges and local fund. The C.C.F. reports that according to the orders issued by the Jawhar State the sale proceeds of tree growth in the village were allotted between the Ruler, the Inamdar and the Khatedars of the Inamdar as below:-

- (a) 9% of the sale proceeds to be paid to the State.
- (b) 20% of the sale proceeds of teak to be paid to Khatedars of the Inamdar.
- (c) 50% of the sale proceeds of injaili to be paid to the Khatedars of the Inamdar.

The Collector of Thana is of the opinion that as the Indian Forest Act has now been applied to Jawhar taluka, it is not necessary to respect the above orders. The R.L.A. is requested to advise in the matter.

2. The sanad of 1920 at page 39 of the case papers which was issued in favour of Shri R.B.Joglekar bestows on him the same rights in respect of village Bhuritek as were given to his predecessor-in-title by the Sanad issued by Dagunabai Rance Sahab in about 1842 (i.e. Shaka 1764). That Sanad is not available either with the Inamdar or in the Government records. In the absence of the Sanad it cannot be said definitely whether Shri Joglekar is or is not entitled to the tree growth. But one condition is significant in the sanad of 1920 viz. that the village will be managed by the State and the grantee will be paid the amount remaining after deducting the management charges and local fund. It is true that there is no specific provision about the income derived from the trees in the village. But the fact that the Jawhar State was dividing that kind of income amongst itself, the Inamdar and the tenants would weigh in favour of the Inamdar who would appear to be entitled to the same proportion of the income. Presumably there was some condition to that effect attached to the original sanad of 1842. In that case it would not appear correct to overlook the vahivat orders issued by the Jawhar State. In the absence of any definite evidence to the contrary it appears that Government will have to continue the old arrangement in respect of the division of the income of the forest trees.

Td/- J.R.D. 21/5

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No.8085, dated the 22nd May 1951.

Legal Department.

As the Devasthan Inam has been resumed by levy of full assessment, the land loses its Inam character as alienated land. There is, therefore, no objection to its removal from the Inam category.

Id/- B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 8252, dated the 25th May 1951.

KAN/13-7.
4 c.

Legal Department.

Refund of Nazarana
Limitation Act, 1908
 Art.16.

In view of the High Court decision in Second Appeal No.522 of 1946 the levy of occasional nazarana on any of the 97 S.nos. would not be proper and it is not necessary that the other occupants of any of these survey numbers should also obtain a similar declaration from the Court that they are not liable to pay the occasional nazarana. The occasional nazarana of -
 B.70-10-0 was recovered from Shrimati Varubai, w/o. Krishnaji Narayan Chitnis on 21st June 1947 and she can legally claim and obtain through Court refund thereof within one year from payment under Article 16 of the Limitation Act. Her claim for refund is now time-barred but that will not preclude Government from making restitution, if on grounds of equity they think such restitution justified or called for.

Id/- B.D.M.

Additional Secretary to Government.

27
 U.R. to B.D. No. 8570, dated the 31st May 1951.

KAN/13-7.
 4 c.

Office of the R.L.A.Inam Lands.Torgal Jahagir
Restoration of

Survey Nos. 2 and 3 of Sunnal in Torgal Jahagir were granted in Inam by the Jahagirdar of Torgal to one Anandibai Mami Bhosale in perpetuity to her family about the year 1779 A.D. (vide p. 81 file I). Her family continued to enjoy the lands from generation to generation for over 120 years till the year 1900. In that year Anandibai II, wife of Ganpatrao Bhosale, who was the last holder died without issue leaving any direct male descendants. An heirship inquiry was therefore started in which Shri Vithalrao, father of the present applicant Venkatrao, applied to be recognised as the nearest heir. His claim was however not considered as he was a remote heir of the deceased and the lands were resumed by the Jahagirdar under his order No. 1/1312 dated the 12th September 1902 (pp. 25-31, File I). Being aggrieved by these orders one Shrimati Mainbai, widow of Anandibai's husband's brother, preferred an appeal to the Jahagirdar contending that she was the nearest heir of the deceased and as such was entitled to the property. The Jahagirdar conceded her claim but directed that the Inam should be continued to her for her life time only (pp. 13-14, File I). Shrimati Mainbai, thereupon, preferred an appeal to His Highness the Maharaja of Kolhapur contending that the grant was in perpetuity and that it should not therefore be restricted for her life time. His Highness allowed the appeal deleting

the restriction and this order was confirmed by the Resident Political Agent of Kolhapur on 1-12-1916 (p.18, File I).

2. Shrinath Mainabai had, however, died in the meanwhile in 1913 and on her death the lands were resumed by the Jahagirdar. The orders of the Maharaja were it appears communicated in 1919 to Vithalrao, father of the present applicant, who, according to the Collector appears to have been the nearest heir after Mainabai's death but he did not take any steps to get his rights recognised. He died in 1923 leaving behind him the present applicant who was then three years old. On attaining majority, the applicant made a request for restoration of the lands in 1939 but no orders were passed on his application.

3. On 1-3-1949, the Torgal Jahagir merged in the Belgaum District. After the merger, the applicant applied to the Collector on 14-12-1949 for the restoration of the lands; but the Collector rejected his application on the ground that it was time barred (p.93, ~~File~~ File I). Being aggrieved, the applicant has preferred an appeal to Government and the R.L.A. is requested to advise on the short

point whether the applicant's claim is time-barred.

4. In this case the lands in dispute form part of a grant in the nature of a sub-inam made by the Jahagirdar of Kolhapur. According to the law in force in the Kolhapur State, the Kolhapur Government may be entitled to interfere in such a dispute. But after the merger, the State Government has no such power. The applicant may be informed that he

is for the redress

does not in

19/6,
al Affairs

Office of the P.L.A.Personal Inam.Land Revenue Code,
1879.

Section 37(2).

R.L.A. sees no reason to reconsider his opinion No.14429 dated 14-10-1950. Section 37(2) of the Land Revenue Code has application only when any right in or over property is claimed by Government or against the Government. In a case of this kind where the Inamdar's ownership of the soil is admitted and the Government has only a share in the revenue therefrom, section 37(2) will have no application. Whenever the position as apprehended by the Collector in para 5 of his letter at page 29 ante arises and Government is deprived of its legitimate share of revenue, Government in whom the management of the Sharakati village vests, can recover through Court its share of the rent.

18/- J.R.D. 23/6

Remembrancer of Legal Affairs.

U.R. to R.D. No.10117, dated the 26th June 1951.

KAN/13-7.

4 c.

Office of the R.L.A.

In the concluding portion of R.L.A's opinion No.14111, dated 7-10-1950 (p.63 ante) a doubt was expressed, in view of the absence of the Sanad granted in respect of the village Kanzari, whether the Inam should be treated purely as a personal Inam or as a Devasthan Inam. The Sanad said to have been granted in the year 1865 is not traceable. The Alienation Officer stated that the village in question is entered in Government records as a personal Inam of Class II and a summary settlement Sanad in Form I was issued. The blank copy of Form No.I forwarded by that Office shows that the property of the grantee subject to the condition of the grantee and his heirs in continuing to be faithful to the British Government. If the original Sanad was granted in this Form, as reported by the Alienation Office, it would appear that the Inam would have ordinarily to be considered as a personal Inam. But in this connection attention is invited to the decree passed by the Sub Judge, Kaira, on 24th March 1876 in Original Suit No.356 of 1863, under which a scheme was settled by the Court in connection with the administration of the Inam village. The scheme mentions the expenses which the Defendant Tambvekar was ordered to incur from out of the revenue of the villages of Dakor and Kanjiri "granted in Inam to the idol of ~~Rancho~~ Rancho Rajji." The decree was passed 11 years after the Sanad said to have been issued in the year 1865, and shows that the Inam was treated by the Court as a Devasthan Inam. In view of this a notice should be issued to the existing heirs of Tambvekar

show cause why in view of the scheme framed by the Civil Court in Original Suit No. 356 of 1863 the entry in the Alienation Register should not be changed; and in case there is no reasonable and proper explanation from him there would be no legal objection to changing the entry in the Alienation Register to conform to the scheme. It ~~will~~ would be helpful at the inquiry if the trustees of the temple are also called.

Id/- J.R.D. 2/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10537, dated the 3rd July 1951.

KAN/13-7.

4 c.

Office of the R.L.A.

In this case the applicant contends that as the Inamdar of the village he is entitled to several pieces of land which were attached and taken over by the Kurundwad State as having escheated on account of the occupants thereof having died without any heir. The order was passed by the Kurundwad State in 1935 and even before the merger the State was in possession of the lands for more than 12 years. The Collector and R.D. suggest that the order of the State should be set aside and the lands should be restored to the applicant. In making this suggestion reliance is placed on the rules applicable to inams in the Bombay State proper and also to the rules of interpretation adopted in construing inam sanads. This view is not correct. There is nothing to show that the Kurundwad State followed those rules. In any case if the Kurundwad State has, as far back as 1935, passed an order attaching these lands and the State had been in possession of them until the date of the merger, there is no ground for setting aside the order and restoring the lands to the applicant who has lost all claim to them if he had any. Moreover, Government in R.D. has not yet decided how inams and other alienations in the merged States should be treated.

Id/- J.R.D. 22/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No.11716, dated the 24th July 1951.

Office of the R.L.A.

The grant in this case was of a share of the revenues of the village. It appears from the papers that the inam in question was described in the Sangli State Records as 'Jat Inam' and the sanad contained the words 'from generation to generation'. According to the law in the Bombay State proper, the inam in question would have been held to be transferable and heritable and females would not have been debarred from inheriting the same. But it is stated in the Rajasahab's order and it is also implied in the Diwan's note that such was not the law in force in the State, although the State Council had held it otherwise and the Civil Court had issued a heirship certificate to the petitioner Banubai. From the papers of the inquiry in the present case it would be difficult to come to the conclusion that the Rajasahab's order was wrong. This Government is not estopped from setting aside the order of the Rajasahab if it was unjust or wrong. But the important question in the present case would be whether it would be advisable to interfere with that order. R.D. has not yet decided how inams and other alienations in the merged States should be dealt with. If the order of Rajasahab in the present case is confirmed or set aside, it would mean giving recognition to the inam. Moreover, any such order and the entry in the Revenue records relating to the inam would not be conclusive. The aggrieved party can challenge it in a Civil Court. The proper course in the present case will be to refer the petitioner to the Civil Court. If she applied for a certificate under the Pensions Act, it may be given.

Id/- J.R.D. 21/7

Remembrancer of Legal Affairs.

U.R. to R.D. No.11717, dated the 24th July 1951.

OFFICE OF THE R.L.A.

It is difficult to ascertain from the papers how and in what manner the appeal lay to the Karbhari of the State. So far as I know the Thakore of Tharad was suspended from the Gadi and his State was under management when the Indian Independence Act was passed. This point may be verified from the P. & S.D. In any case Government should not undertake for themselves the responsibility of entertaining this appeal. The parties may be informed that they should have recourse to the Civil Court for the establishment of any rights which they may have against one another. Such a course will be proper in view of the fact that Government has not yet decided whether and to what extent they would be prepared to recognise the Jahagi alienations in the merged areas.

Id/- J.R.D. 2/8

Remembrancer of Legal Affairs.

U.R. to R.D. No.12373, dated the 2nd August 1951.

Office of the R.L.A.

Andewadi village
Hyderabad (Abolition
of Jagirs) Regula-
tion, 1358F.

and
India & Hyderabad
(Exchange of
Enclaves) Order,
1950.

Under the Hyderabad (Abolition of Jagirs) Regulation, 1358F it appears that the Jagirs were abolished with effect from the appointed day and pending the determination of the terms of commutation provisions were made for the payment of certain interim allowances to the Jagirdars and Hissedars. Section 6(2) provides that the powers, rights and liabilities of the Jagirdar in relation to the Jagir shall cease to be exercisable and enforceable by or against the Jagirdar and shall be exercisable and enforceable by or against the Jagir Administrator. The effect of this provision is that the Jagirs were abolished and the powers, rights and liabilities of the Jagirdars were transferred to the Administrator of the Jagirs. In the present case it appears that the administration of the Jagir was taken over by the Jagir Administrator on 28th September 1949 and consequently with effect from that date the Jagirdar ceased to be a Jagirdar and all his rights powers and liabilities with respect to the Jagir stood abolished. It is true that the Hyderabad (Exchange of Enclaves) Order, 1950, has by clause 7 abolished all the laws in force in the enclave immediately before the appointed day and applied all laws in force in the absorbing Province from that date, and by the proviso to clause 7 it is provided that anything done or any action taken under the laws in force in the enclave before the appointed day shall be deemed to have been

done or taken under the corresponding law extended to and in force in that enclave as from the appointed day. But in the absorbing Province, that is to say, in the Bombay State there is no law corresponding to the Hyderabad (Abolition of Jagirs) Regulation, 1358-F. However, clause 6 of the Order provides that all rights, liabilities, obligations whether arising out of the contract or otherwise of the Government of Hyderabad in relation to an enclave shall as from the appointed day be the rights liabilities and obligations respectively of the Government of the absorbing province except such of the said rights, liabilities and obligations as are relatable to Central purposes. A provision to that effect is also made in Article IV of the Agreement made between the Governor General of India and the Nizam of Hyderabad. Under the Hyderabad (Abolition of Jagirs) Regulation, 1358-F, pending the determination of the terms of commutation provisions have been made for the payment to Jagirdars and Hissedars of certain interim allowances. These payments would be in the nature of agreements between the Jagirdars and the Hyderabad State, Government would, therefore, be entitled to manage the Jagirs and be liable to pay the amounts provisionally settled under the Regulation until the terms of commutation are finally settled by Government.

and constitute the liability of the latter which liability would now be binding on the Bombay State.

16/- J.R.D. 14/8

Remembrancer of Legal Affairs.

KAN/13-7.

U.R. to P. & S.D. No.13156, dated 17th August, '48.

Office of the R.L.A.

Shri S.R.Potnis of Kolhapur holds certain Inam lands measuring 82 acres 39 gunthas assessed at Rs.489-8-0.situated in 9 villages in the Kolhapur State. The lands are subjected to full judi and no service is taken from the holder. In 1945, the Kolhapur Government passed an Act called "The Clerical Service Inam Land Conversion Act, 1945" and it was brought into force retrospectively with effect from 1.6.1944. On 15.12.1948 Shri V.R.Potnis, brother of the holder of the Inam lands, applied to the Sar Subha of the Kolhapur State requesting him to take action under the aforesaid Act and to convert Inam lands into Rayatwa. An inquiry was held in the matter and it was found that the lands were burdened with clerical service. Orders were, therefore, passed on 19.9. 1949 to convert the lands into Rayatwa according to section 4 of the Act. Against this order, Shri S.R.Potnis preferred an appeal to Government and on consideration of the relevant evidence Government was pleased to set aside the Collector's order holding that the lands were free from liability of any type of service (Vide Government Letter, Revenue Department No.5598-H/49, dated the 8th December 1950). The Collector of Kolhapur however, considers that Government should reconsider their decision. His view is that the lands are burdened with service and to hold otherwise ^{wise} would upset the decisions of competent authorities extending over the last century and that if the Government orders are allowed to stand, similar orders passed by him in respect of other Inams will have to be revised which will involve Government in the financial implications. The Collector further points out that if the lands are held

be free from service they will have to be turned into Rayatwa according to a Vat Hukum of 1929 (Vide Collector's letter at pages 69-75 of the corresponding section). The R.D. now considers that the Collector's order which has been ~~reversed~~ reversed will have to be restored, but the R.L.A. is requested to advise.

2. It is the contention of Shri S.R.Potnis that the lands were not granted to him for rendering clerical service or service of any other kind; that only Gadkari service has been performed in respect of the Inam from 1920 to 1949 and therefore, the Kolhapur Clerical Service Inam Land Conversion Act, 1945, is not applicable to the lands in question. Shri Potnis has not been able to produce any sanads but he has produced copies of Adnyapatras issued by the Raj-Mandal. These Adnyapatras expressly state that the lands are granted for service (गदकरी) but they do not show that the grant was made for services already rendered and no service was to be rendered in future. (Ex. 10, 11, 12, 13 and 15 at page 85-101 of Collector's File No. 3). In the Adnyapatra at Ex. No. 15, however, the words "गदकरी" have been used which clearly show that the lands were burdened with service but these words do not find a place in the other copies. The history for the last 90 years shows, however that the lands were held to be for rendering service and it was ordered by the Political Agent in his order dated 24.2.1860 that a sum of Rs.100/- should be collected from the Inamdar in lieu of service. This service it appears was to be of a clerk (vide Political Agent's Order dated 27.11.1873). These orders, it appears, were acquiesced in by the Inamdar and it would, therefore be reasonable to hold that the lands were granted for rendering clerical service. It is, & however, true that Gadkari service was demanded from the Inamdar in 1920; These orders are of a later date and it appears that they would not affect the original nature of the grant. In the circumstances the order passed by the Collector dated the 19th September 1949 appears to be legal and valid.

18/- J.R.D. 29/8

Remembrancer of Legal Affairs.

U.R. to R.D. No.13995, dated the 31st August 1951.

Office of the R.L.A.Inam Lands.

Baroda Vatan Rules under

whether tenure
can be changed.

Decais of Gandevi in Surat District are Inamdars

of certain lands situated in the former Baroda State.

They propose to sell 1,240 acres out of these lands to their tenants and have requested Government to grant them permission to do so. The lands are at present treated as Vatan lands and under the Baroda Vatan Rules which are applicable to them they are not alienable without Government's permission. The relevant provisions regarding alienation are contained in Rule 27 of the Baroda Vatan Rules, 1949 which runs as follows :-

27, (1)(a) Vatans are inalienable:

Vatans shall not be mortgaged, sold or otherwise alienated without the sanction of the Government.

(B) Alienations will be void: Alienations made in contravention of clause (a) will be of no avail in Courts of Law or against the rights of Government.

(c) Land will be made Khalsa and put to auction:

Such alienations shall not be recognised by the State and land will be made Khalsa i.e., will be treated as Government unoccupied land and put to auction.

Sub-rule (2) of Rule 27 contains a Proviso relating to alienations made prior to 1892 A.D. and other specified periods, but the same is not relevant for this case.

Under these Rules permission of Government is necessary for alienation of Vatan lands and alienation without permission is void. In the present case, however, it is pointed out that though the lands are at present treated as Vatan lands, they are on ancient grant, that they were granted to the Desai family in the Moghal regime and

treated as Wajifa lands till the year 1900, when the Survey and Settlement Commissioner, Baroda, passed orders directing that the lands should be treated as Vatan Lands. The Wajifa lands, it is stated, are not governed by the Vatan Rules and no sanction is required to alienate them. Secretary, Revenue Department, has, therefore, referred the papers to R.L.A. for advice on the following points:-

- (1) Whether in the circumstances stated in the Barkhali Assistant's letter dated 6th August 1951 at pp. 41-47 ante the lands can be treated as Wajifa lands instead of as Vatan and
- (2) If they are Vatan lands, whether the condition to give a portion of the sale proceeds as Nazarana to Government can be levied under Rule 27 of the Baroda Rules.

2. As regards (1): The term Wajifa or Wazifah means lands assigned for the payment of a pension or stipend; or a pension or a stipend or a grant of land rent free, or at a quit rent, to pious persons or for past services (Aiyar's Law Lexicon, p. 1333). It appears that it is ~~in~~ the contention of the Desais that all the lands are Wajifa lands. This contention of theirs does not appear to be fully supported by the copies of the Sanads enclosed by the Barkhali Assistant in some of which the ^{land} is described as Desaigiri Vatan and in some as Wajifa. Besides, this contention was negatived, by the Settlement Commissioner of Baroda in 1900 who appears to have held that the major portion of the land of the Desais were Vatan lands (vide his order at pp. 11-13 of the case papers) and it was not challenged by any one during the last fifty years. No cogent grounds have been advanced

by the Barkhali Assistant to hold that this order of the Settlement Commissioner was wrong. He merely states that the lands were treated as Wajifa before 1900 and that they were thereafter treated as Watan. There does not, therefore, appear to be any valid grounds for reopening the question now and it would not be open to the holders to go behind the decision of the Baroda Government as regards the character of the tenure arrived at so far back as 1900.

3. As regards (2): Rule 27(1) of the Baroda Watan Rules does not specify what conditions can be imposed by Government in granting permission to alienate Watan lands. But the prohibition contained in this Rule is similar to the one contained in section 5(1)(a) of the Bombay Hereditary Offices Act, 1874. Government have prescribed conditions for granting permission to alienate Inam lands in Government Resolution, Revenue Department No. 4119, dated the 7th August 1950. These orders, it appears, are of general application to alienated lands. In the circumstances, there does not appear any objection to levying the Nasa-rana as per conditions contained in the Government Resolution while granting permission to sell the lands.

Id/- J.R.D. 4/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14187, dated, 4th September 1951.

OFFICE OF THE R.L.A.

Inam lands -
Daflepur

Resumption
by Ruler of
Jath -
Whether Ruler's
Order should
be set aside.

The Inam was a personal inam and was continuable hereditarily. There were no conditions in the Sanad and according to general law the Inam should have been continued to the descendants of the original grantee. "If there be not any breach of conditions by the donee, the Government cannot, any more than a private person, revoke a gift actually made without the consent of the donee (Collector of Ratnagiri vs. Venkatrao, 8 Bom. H.C.R. 1 at p. 5). In the present case, the Ruler purported to resume the lands under Rule 13 of the Inam Rules which were in force in the State. Rule 13 however, had no application to the present case and consequently the order of resumption passed by the Ruler was invalid. The subsequent regrant was also illegal as the resumption was not valid and the inam had not validly reverted to the State. In his opinion No. 11717, dated 24th July 1951, the R.L.A. has held that Government is not estopped from setting aside the order of the Rajasahab if it was unjust or wrong. But as pointed out by Secretary, R.D. as 30 years have elapsed since the order was passed and the rights of third parties have come into existence, it would not be proper for Government to interfere with the order passed by the former ruler. The person aggrieved may be asked to establish his claim in a civil court.

Id/- J.R.D. 5/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15899, dated the 6th October 1951.

From the deed dated 7th June 1862 described as 'Katu
 barpatra' at pages 97-98 of File IV it appears that
 Gangaaji Desai the original holder of the watan in con-
 sideration of the loan of Rs. 140/- he owed to Shri ~~Abdeo~~
 Abdeo Samant transferred to the latter the piece of
 land which was already in possession of Abdeo Samant
 then for a period of 20 years. The land was to be
 enjoyed by Abdeo Samant and his heirs from generation
 to generation, the only condition attached being that
 the transferee or his heirs should every year pay a
 sum of two rupees. The deed does not mention what is
 to happen if the grantee or his heirs fail to pay the
 sum of two rupees as agreed. It is true that Shri
 Samant ~~has not paid the amount for the~~ / last 10
 years. But that is a matter between the Watanfar and
 Shri Samant and the former may seek his remedy if any in
 a court of law. So far as Government is concerned in
 view of the deed of 7th June 1862, which was executed
 before restrictions were imposed on the transfer of
 watan lands, the request made by Shri K.R. Samant will
 have to be granted. The view expressed by the Under
 Secretary, R.D. in this respect is correct.

Id/- J.R.D. 20/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 16741, dated the 22nd October 1951.

Office of the R.L.A.

The Resolution passed by the Executive Council, Kurundwad J. State, on 29th February 1948 and approved by the Chief on the application of Shri T. B. Desai dated the 24th February 1948 is in the following terms.

"Resolution:- The Tharav of Shrimant Huzur dated the 22nd August 1913 following the advice of the Political Agent dated the 13th March 1912 is held valid. Subsequent Tharavs of Shrimant Huzur, if they are inconsistent with that Tharav, are hereby set aside."

It is true that this Resolution recognized the order passed by the Chief on 1st May 1912 directing the levy ^{ment} only of masul judi and not settlement/judi and set aside the order passed by the Chief in 1922 on the succession of the present Inamdar directing the ^{levy} of settlement judi. But the Resolution by itself does not provide that the amount recovered from the Inamdar in excess on account of the rate of settlement judi should be refunded to him. Moreover Although the matter was pending for a number of years the application made by the Inamdar on 24th February 1948 was disposed of by the Council within 5 days; the Secretary wrote to the Chief on that very day; and the Resolution was assented to by the Chief on 5th March 1948. All these facts lead one to the conclusion that the matter was disposed of hurriedly in view of the impending merger. It appears further from Shri Desai's application dated the 24th February 1948 that he alleges that settlement judi was recovered from him for nearly 20 years on account of

his minority; but that argument does not appear to have much force for in 1926 an application was made by his guardian-mother protesting against the levy (pages 527-529 of File II) Besides the claim for refund is time-barrred. For these reasons there does not appear any objection to rejecting the claim put forth by the Inandar, recovering from him mamal judi hereafter and forgoing the arrears due from him.

Id/- J.R.D. 29/10

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 17247, dated the 1st November 1951.

KAN/13-7.

4 c.

L.D.R.I. No. 21205 dt. 15-10-51.

Submitted.

Shri S.R. Potnis and his brother Shri V. R Potnis hold certain Inam lands in the Ex - Kolhapur State. The Collector of Kolhapur held in his order dt. 19-9-49 that these lands were originally granted for "clerical service" and directed their conversion into rayatana under the provisions of the Kolhapur Clerical Service Inam Land Conversion Act, 1945. Shri S.R. Potnis preferred an appeal against this order and Govt. under their Order No. 5598-M/49 dt. the 8th December 1950, set aside the orders of the Collector on the ground that the lands were held free from any liability of any type of service (vide p. 67 of Corresp. section). The Collector of Kolhapur, thereupon, requested Govt. to reconsider their orders and the case was referred to R.L.A. who advised, inter alia, in his opinion No. 13995 dt. the 31st August 1951 as follows:-

" The history for the last 90 years shows, however, that the lands were held to be for rendering service and it was ordered by the Political Agent in his Order dt. 24-2-1860 that a sum of Rs. 100/- should be collected from the Inamdar in lieu of service. This service, it appears, was to be of a clerk (vide Political Agent's Order dt. 27-11-1873). These orders, it appears, were acquiesced in by the Inamdar and it would, therefore, be reasonable to hold that the lands were granted for rendering clerical service."

The R.L.A. accordingly advised that the Collector's

Order was legal and valid and Govt. thereupon restored the orders passed by the Collector of Kolhapur converting the lands into rayatwara by setting aside its own order dt. 8-12-1951.

2. It has now been brought to the notice of Govt. that in a private litigation between Shri S.R. Potnis and Shri V.R. Potnis, the Joint Civil ~~sess~~ Judge, Senior Division, Kolhapur, has held in his judgment dated the 31st July 1951 that the lands were held for service but not all of them were for clerical service and that they do not fall within the purview of the Kolhapur Clerical Service Inam Lands Conversion Act. The Civil Judge appears to have been influenced in this decision by the fact that different type service ~~was~~ ~~in~~ was being taken and that the order of the Collector was cancelled by Govt. In para 23 of his judgment he observes:-

"The Act applies only to "lands burdened with clerical service of any kind." I have already shown above that the lands are burdened with service but not necessarily clerical service though it was taken at times according to requirements of the State. I have shown above that 5 acres, 7 gunthas of S.No. 83 at Shirohi was the only land converted into rayatwara in 1945 and though subsequently all other lands were ordered to be converted the Bombay Govt. reversed that decision. "

3. The Revenue Department considers that as Govt. was not a party to the suit and as the orders of Govt. referred to ~~in~~ ~~the~~ ~~judg-~~ ment are since cancelled no action is necessary on the part of Govt. and that it would be for the parties to go in appeal in view of the latest orders of Govt. The R.L.A. is, however, requested to advise.

4. The view taken by R.D. appears to be correct. As Govt. was not a party to the litigation the decision is not legally binding on Govt. Moreover, whether the lands were granted for clerical service is a question of fact ~~and~~ and if the matter goes to the appellate Court, a different view might be taken. Govt. need not, therefore, revise its orders till the matter is decided by a final decision of the High Court.

Id/- 10/11

D.S. (Civil) As in para 4

Id/- R.T.K. 17/11

Id/- J.R.D. 17/11

R.L.A.

U.R. to R.D. No.18410 d. 19-11-1951.

KAN/14-7.

Office of the R.L.A.

Forfeiture of Inam
Whether tenants
are entitled to
claim their rights

R.L.A.'s opinion
No.7163, dated
30-7-48.

As there was a breach of the conditions of the grant, the land was forfeited by the Collector under his order Ho.W.T.N./SR-I/16-51, dated the 21st April 1951. On forfeiture, the heirs of the Inamdar lost all their rights in the land and consequently, the sub-tenures created by them will also come to an end.

It is the general principle of law that when the principal tenure ceases to exist, all under-tenures must come to an end. The under-tenures cannot survive the extinguishment of the principal tenure (vide R.L.A.'s opinion No.7163, dated the 30th July 1948 and the Secretary of State vs. Girjabai, 29 Bom.L.R.1503). In view of this legal position, the tenants cannot legally demand restoration of the land to them. The view taken by the Collector is correct.

Id/- J.R.D. 10/11.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 17879, dated the 12th November 1951.

KAN/14-7.
4th c.

20026/27-9-51.

Submitted with reference to R.D. note at p. 9 ante.

In this case the Collr. of Broach in his letter at p. 1 ante has proposed that the management of the Devasthan property attached to the Gaji Pir at village Uchedia, taluka Jhagadia, be handed over to one Kasamsha Rajabsha. It appears that S.Nos. 154 and 327 of that village have been granted in Inam for performing religious service. From the Summary Settlement Sanad (at pp. 4-5- of corres. section) it would be seen that the Inam was granted to Fakir Rajabshah and another for the upkeep of the Gaji Pir. One of the conditions of the sanad prohibited the alienation of the land in question in which case the management was liable to be taken over by Govt. As the lands were mortgaged the Rajpipla State took over the management of the estate by Khazur Order dated 20-6-1932. The members of the village committee now recommend that the management of the Devasthan estate be handed over to Shri Kasamsha Rajabshah as he is performing the religious service satisfactorily. The R.D. proposes to accept the Collr's proposal on the following conditions in additions to those stated in the Sanad:-

- (1) that Shri Kasamsha Rajabshah performs the religious service satisfactorily;
- (2) that a separate account is maintained by him of the income from the Inam lands; and
- (3) that he retains only an amount of Rs.23/- per annum as remuneration and utilises the rest for repairs etc. to the Pir.

The papers are shown to this Deptt. before issue of orders.

The question for consideration is whether there would be an

legal objection to accepting the Collr's proposal subject to the conditions proposed by the R.D.

2. The grant in question is in the nature of a religious inam for the upkeep and maintenance of the Pir. The management had been taken over by the Rajpipla State for breach of conditions of the sanad. As the local committee recommends the restoration of the management of Kasamsha there would be no objection to accepting the Collr's proposal on the conditions mentioned in the R.D. note as there is no actual resumption^{of} the grant. The papers may be seen and passed on to the F.D.

Id/- ~~Revised~~ 14/11/51

D.S. (Opinion) Id/- R.T.K. 14-11

Addl. Secy. Id/- B.D.M. 15/11

R.L.A. Id/- J.R.D. 15/11

U.R. to F.D. No.18218 dt. 16-11-1951.

KAH/14-7.
4 c.

Office of the R.L.A.

It is true in this case that the appellant got a decree in his favour for the sum of Rs. 1129-3-9 when the Sarsubha passed his order in Inam Suit No. 36 of 1919 on 10th July 1920; and a sum of Rs. 1694-11 was actually recovered by the Revenue Authorities from the Nav-vala and paid to the appellant. But it appears that before the Ruler passed his Order in 1933, the law had changed whereby suit matters, even for execution, were required to be sent to Civil Courts. That is what the Huzur Order of 1933 appears to have directed. It is true further that the Revenue Authorities did not take any steps to forward the papers to the proper civil court as directed by the Huzur Order as the papers were missing. But it appears that it could have been possible for the appellant to approach the civil court for establishing his claim there. He took no steps in that direction. In the circumstances it does not appear anything can be done by Government in the matter. The only remedy for the appellant would be to approach the Court as suggested by the Collector. The view expressed in the Collector's Order of March 1951 appears to be correct.

Id/- J.R.D. 20/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18634, dated the 21st November 1951.

Office of the R.L.A.

The question referred to the R.L.A. for consideration is whether it would be competent for the State Government to interfere with the order passed by the Raja of Jath on 29th February 1948 by which he directed resumption of 22 Inam lands out of the villages of Utagi, Sonyal, Susbad and Bhivargi from the occupant thereof and their restoration to the Paranaga Deshmukhi Watandar (i.e. the Ruler himself). Against that order of the Rajasahab an appeal was made by the occupant Shri B.S. Desai to the Chief Administrator who forwarded the same to Government. The appellant's request was rejected by Government on two occasions. (Vide orders dated 17-11-1949 and 8-2-1950). He has opened the same matter again. The file now contains representations made both by the occupant Shri Desai and the Ruler of Jath. The arguments put forth by both are as stated below:-

2. The first preliminary point raised by the Ruler of Jath in his memorial is whether the State Government has jurisdiction to entertain the appeal of Shri Desai. Such jurisdiction according to him would affect the guarantee given by article 3 of the agreement of merger read with article 362 of the Constitution. The Raja states further that the grant was of a Jadid Inam and that his order of resumption was valid under the Inam Rules of 1919; that the lands in question having since been recognized as part of his private property, it would not be open to the State Government to reopen the matter.

3. The contentions put forth by Shri B.S. Desai on the other hand are that the grant of the Inam was made by the

Adilshah of Bijapur even before the coming into existence of the Jath Jahagir as Gumasta Deshmukhi Watan for services to be rendered as Gumasta to the Adilshah; and that it being therefore a Kadin grant is not governed by the Jath Inam Rules of 1919. The petitioner has not however been able to produce documentary evidence to show that the grant originated during the Adilshahi regime.

4. The R.D. considers that it would not be proper for the State Government to interfere with the order passed by the Rajasaheb now especially as the lands which were the subject matter of that order have been recognised by Government as the private property of the Ruler; and that the best course would be to let Shri Desai approach a Court of law if so advised. The R.L.A. is requested to advise in the matter.

5. One of the contentions put forth by the Ruler of Jath is that the Government of Bombay has no jurisdiction to interfere with his order dated 29-2-1948 which was made by him before he handed over the administration of the State. This contention has however no force as there is nothing to prevent the State Government who have stepped into the shoes of the Ruler from reviewing that order if they consider that it has resulted in injustice or was made with a mala fide contention. Similarly the reliance placed by him on article 362 is also not correct. That article provides that in the exercise of the executive power of the State due regard shall be had to the guarantee given under any agreement of merger with respect to the personal rights, privileges and dignities of the Ruler of

an Indian State. Possession of private property has not been recognized as a personal right or privilege (vide the Memorandum of the Personal Privileges of the Rulers issued by the Government of India). But the main point is whether as the properties in question have been recognized as the private property of the Ruler of Jath it would be competent for the State Government to interfere with the Ruler's order dated 29-2-1948. The answer to this question appears to be in the negative. The list of private properties has been prepared in pursuance of clause 3 of the agreement of merger; and has been finally accepted by both the Government of Bombay and the Government of India (vide the Chief Secretary's D.O. Letter dated 12-7-1949). The list forms part of the agreement of merger. If the List has to be modified it will not be a matter of agreement between the Government of India and the Ruler of Jath. It would not in any case be feasible for the Government of Bombay to disturb it. For these reasons it does not appear it would be competent for the State Government to revise the Ruler's order dated 29th February 1948. It appears further that the occupant Shri Desai has not been able to prove that the grant of the Watan had been made by the Ruler of Bijapur and that the Inam Rules in force in the Jath State had no application to that Watan. On the contrary when the Ruler of Jath held the lands to be Jadid in 1920 and levied a service Juddi of 4 annas on the lands in 1922, the watandar acquiesced in that decision. In the circumstances as observed by the Chief Secretary in his note at page 154 ante it would not be expedient to interfere with the Raja Sahab's order.

The possession of the lands appears to be still with Shri B.S. Desai. Government cannot evict him and put the Ruler of Jath in possession of these lands. If the Ruler wants to take possession, he will have to do it through court. In those proceedings Shri B.S. Desai will get an opportunity to prove the illegality of the resumption order.

Id/- J.R.D. 23/11

Remembrancer of Legal Affairs.

U.R. to R.D. No.18817, dated the 23rd November 1951.

Office of the P.J.A.

The question for consideration in this case is whether Hon'ble the Minister (Industries and Labour) has in his capacity as the ex-Ruler of the Phaltn State right to sell his right as the holder, in certain lands which are called Deshmukhi Sheri lands, ^{are situate in the area which} ~~The lands which are situated in the area which~~ originally formed part of the merged Phaltn State and in the Districts of Satara and Poona. It appears from the Hon'ble Minister's minute that the lands were originally granted to the Ruler of Phaltn as Deshmukhi Lands. In the State records they were entered as 'Jat' or 'personal' inam, but just before the merger of the State it was ordered that they should be entered as 'non-service Deshmukhi Watan lands'. It is stated that lands which are in the old Province of Bombay have been shown as non-service Deshmukhi Watan Lands. The lands are included as the private property of the Ruler at the time of the merger and in the list of ~~the~~ private properties they are shown as "Deshmukhi Sheri lands".

2. In order to determine the real nature of lands, it is necessary to refer to certain ~~the~~ historical facts. The Ruler of Phaltn was one of the feudatories of the Rajah of Satara. In the treaties entered into by the East India Company on the advent of the British rule with both the Rajah of Satara as well as with the Ruler of Phaltn, the Ruler of Phaltn is described as 'Naik Nimbalkar Deshmukh of Phaltn ~~as~~ Naik Nimbalkar

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of the Phaltan Pergannah'. By the treaty entered into in July 1820 the Rajah of Satara had guaranteed the continuance of the Pergannah of Phaltan to the Ruler of Phaltan. (Aitcheson's Treaties Vol.VIII p.154) The East India Company entered into a separate treaty with the Ruler of Phaltan on 20th April 1820 (Aitcheson's Vol.VIII p.150) and had guaranteed the continuance of the Phaltan State. In both the treaties it is stated that the pergannah of Phaltan was held by Naik Nimbalkar as a personal and military Jahagir. As stated above both the treaties describe the Ruler of Phaltan as Deshmukh and refer to Watans held by him. Under the Maratha Rule Deshmukh was a hereditary officer exercising Chief Police and revenue authority over the pergannah (See Wilson's Glossary of Revenue Terms, p.205). It appears, therefore, that during the pre-British period the Ruler of Phaltan held the pergannah of Phaltan not only as a personal and military Jahagir, but had also Deshmukhi rights. Whatever may be the status of the ruler of Phaltan during the pre-British period, it is clear that in 1820 the East India Company recognized him as a ruler and guaranteed not only the continuance of the Phaltan State in his favour, but whatever he held in inam or watan. Even assuming, therefore, that any lands were originally granted to the Ruler of Phaltan by the Maratha Rulers as the holder of the office of Deshmukh, on the advent of the British rule when in 1820 the East India Company recognized him as a ruler,

free from the political suzerainty of the Rajah of Satara, he ceased to be the holder of an office under the latter and the lands ceased to be watan or service inam lands. They were, therefore, properly entered in the Phaltan records as Jat inam of the ruler. It does not, however, appear before the merger, the Dewan of Phaltan ordered their entry as Deshmukhi watan. In any case, such entry cannot alter the real nature of the tenure of the lands. The Ruler of Phaltan cannot in any case be held to be a holder of an office of Deshmukh under himself. This view is further supported by the description of the lands as 'Sheri'. As pointed out in Wilson's Glossary of Revenue Terms the expression "Sheri" denotes private lands.

3. As regards the lands which are new - situate in the six villages of the districts of Satara and Poona, as will appear from the list of the private property of the Ruler of Phaltan given at the time of the merger, they also appear to be of the same character as the lands in Phaltan. These lands are also stated to be a part of the original grant to the Ruler of Phaltan by the Maratha Rulers. On the annexation of the Satara Raj, they came under the British Rule. In the list they are also shown as 'Sheri'. It is stated that in the revenue records of the Districts of Poona and Satara these lands are described as "non-service Deshmukhi watan." The expression "non-service watan" is a misnomer as watan itself implies service inam. If services are

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committed the grant still remains a watan. If, therefore, no commutation was effected in regard to these lands from the description of these lands it is clear that they are nothing but non-service inam and not service-watan. Non-service inams would be Jat inams (see Phadnis's Suranjams & Inams p.99). It seems clear that in 1820 when on the advent of the British rule some of the lands originally held by the Ruler of Phaltan as Deshmukh were included in the territory of the Rajah of Satara and some remained in the Phaltan State. But they formed part of the same grant and the character of the tenure was the same. On the extinction of the office of Deshmukh the lands whether in the Satara Raj or the Phaltan State became the personal inam of the holder without any obligation to serve."

4. The lands situate both in the merged State of Phaltan as well as in the Districts of Satara and Poona being Jat or personal inam are transferable and no sanction of Government is necessary for such transfer. In accordance with the provisions of the proposed bill for the abolition of inams, all the lands will be able to the payment of full land revenue. The only question which requires to be considered is whether the lands being included in the list of the private property of the ex-Ruler of Phaltan the sanction of Government will be necessary for their alienation or transfer. In

regard to this question the view so far taken in several opinions of the R.L.A. is that if the property is held by the ruler as an sponage to the Gadi or by the custom or practice in the family is continued as being non-transferable, the Ruler should not be permitted to transfer or alienate the same (See R.L.A.'s Opinion No.16515 dated 18th October 1951; the Opinion of 17th February 1950). This view is supported by the semi-official letter dated 14-7-51 of Mr. Bugh, Joint Secretary to the States Ministry of the Government of India. It, however, appears from the State Ministry's D.O.No. P.12(12)-/50 dated 18th September 1950 that the classification of the private properties of ex-Rulers into that held by them qua rulers and qua private individuals is under the consideration of the Government of India and the Government of India recognizes as an accepted principle that no property should remain permanently inalienable. If these lands were originally held by the Ruler as a Deshmukh, there would be no justification to hold that he held them as a ruler or that they were an sponage to the Gadi. Moreover, in accordance with the agrarian reform policy adopted by the Bombay State all inams are being abolished and cultivators or tillers of the soil are being made directly liable to pay land revenue to Government. In these circumstances, there would be no objection to hold that the Deshmukhi Sheri lands of the Ex-Ruler of Phalten are

able no objection need be raised that they are an
apanage to his Gadi. In view of the correspondence
with the Government of India and as the question is
still under their consideration, it would be desirable
to report this case to the States Ministry of the
Government of India and to obtain their approval.

Id/- J.R.D. 19/11

Remembrancer of Legal Affairs.

H.M. (Industries & Labour).

KAN/14-7.

4 C.